

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2198
95TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 8, 2010, with recommendation that the Senate Committee Substitute do pass.

5133S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 407.810, 407.815, 407.817, 407.822, 407.825, 407.828, and 407.835, RSMo, and to enact in lieu thereof thirteen new sections relating to motor vehicle franchise practices.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.810, 407.815, 407.817, 407.822, 407.825, 407.828, 2 and 407.835, RSMo, are repealed and thirteen new sections enacted in lieu 3 thereof, to be known as sections 407.810, 407.811, 407.812, 407.815, 407.817, 4 407.818, 407.819, 407.822, 407.825, 407.828, 407.831, 407.833, and 407.835, to 5 read as follows:

407.810. Sections 407.810 to 407.835 shall be known and may be cited as 2 the "Motor Vehicle Franchise Practices Act" or the "MVFP Act".

407.811. It is declared to be the public policy of the state to 2 provide for fair and impartial regulation of those persons engaged in 3 the manufacturing, distributing, importing, or selling of motor 4 vehicles. The provisions of the MVFP act shall be administered in such 5 a manner that will promote fair dealing and honesty in the motor 6 vehicle industry and among those engaged therein without unfair or 7 unreasonable discrimination or undue preference or advantage. It is 8 further declared to be the policy of the state to protect the public 9 interest in the purchase and trade of motor vehicles so as to ensure 10 protection against irresponsible vendors and dishonest or fraudulent 11 sales practices and to assist, provide, and secure a stable, efficient,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 enforceable, and verifiable method for the distribution of motor
13 vehicles to consumers in the state.

407.812. 1. Any franchisor obtaining or renewing its license after
2 August 28, 2010, shall be bound by the provisions of the MVFP act and
3 shall comply with it, and no franchise agreement made, entered,
4 modified, or renewed after August 28, 2010, shall avoid the
5 requirements of the MVFP act, or violate its provisions, and no
6 franchise agreement shall be performed after the date the franchisor's
7 license is issued or renewed in such a manner that the franchisor
8 avoids or otherwise does not conform or comply with the requirements
9 of the MVFP act. Notwithstanding the effective date of any franchise
10 agreement, all franchisor licenses and renewals thereof are issued
11 subject to all provisions of the MVFP act and chapter 301 and any
12 regulations in effect upon the date of issuance, as well as all future
13 provisions of the MVFP act and chapter 301 and any regulations which
14 may become effective during the term of the license.

15 2. The provisions of the MVFP act shall apply to each franchise
16 that a franchisor, manufacturer, importer, or distributor has with a
17 franchisee and all agreements between a franchisee and a common
18 entity or any person that is controlled by a franchisor.

407.815. As used in sections 407.810 to 407.835, unless the context
2 otherwise requires, the following terms mean:

3 (1) "Administrative hearing commission", the body established in chapter
4 621, RSMo, to conduct administrative hearings;

5 (2) "All-terrain vehicle", any motorized vehicle manufactured and used
6 exclusively for off-highway use which is fifty inches or less in width, with an
7 unladen dry weight of six hundred pounds or less, traveling on three, four or
8 more low pressure tires, with a seat designed to be straddled by the operator, and
9 handlebars for steering control;

10 (3) "Coerce", to [force a person to act in a given manner or to compel by
11 pressure or threat] **compel or attempt to compel a person to act in a given**
12 **manner by pressure, intimidation, or threat of harm, damage, or breach**
13 **of contract**, but shall not [be construed to] include the following:

14 (a) Good faith recommendations, exposition, argument, persuasion or
15 attempts at persuasion **without unreasonable conditions**;

16 (b) Notice given in good faith to any franchisee of such franchisee's

17 violation of terms or provisions of such franchise or contractual agreement; **or**

18 (c) [Any other conduct set forth in section 407.830 as a defense to an
19 action brought pursuant to sections 407.810 to 407.835; or

20 (d)] Any [other] conduct set forth in sections 407.810 to 407.835 that is
21 permitted of the franchisor [or is expressly excluded from coercion or a violation
22 of sections 407.810 to 407.835];

23 (4) **"Common entity", a person:**

24 (a) **Who is either controlled or owned, beneficially or of record,**
25 **by one or more persons who also control or own more than forty**
26 **percent of the voting equity interest of a franchisor; or**

27 (b) **Who shares directors or officers or partners with a**
28 **franchisor;**

29 (5) **"Control", to possess, directly or indirectly, the power to**
30 **direct or cause the direction of the management or policies of a person,**
31 **whether through the ownership of voting securities, by contract, or**
32 **otherwise; except that "control" does not include the relationship**
33 **between a franchisor and a franchisee under a franchise agreement;**

34 (6) **"Dealer-operator", the individual who works at the established**
35 **place of business of a dealer and who is responsible for and in charge**
36 **of day-to-day operations of that place of business;**

37 (7) **"Distributor", a person, resident or nonresident, who, in whole**
38 **or in part, sells or distributes new motor vehicles to motor vehicle**
39 **dealers in this state;**

40 (8) **"Franchise" or "franchise agreement", a written arrangement or**
41 **contract for a definite or indefinite period, in which a person grants to another**
42 **person a license to use, or the right to grant to others a license to use, a trade**
43 **name, trademark, service mark, or related characteristics, in which there is a**
44 **community of interest in the marketing of goods or services, or both, at wholesale**
45 **or retail, by agreement, lease or otherwise, and in which the operation of the**
46 **franchisee's business with respect to such franchise is substantially reliant on the**
47 **franchisor for the continued supply of franchised new motor vehicles, parts and**
48 **accessories for sale at wholesale or retail. The franchise includes all**
49 **portions of all agreements between a franchisor and a franchisee,**
50 **including but not limited to, a contract, new motor vehicle franchise,**
51 **sales and service agreement, or dealer agreement, regardless of the**
52 **terminology used to describe the agreement or relationship between**

53 the franchisor and franchisee, and also includes all provisions,
54 schedules, attachments, exhibits and agreements incorporated by
55 reference therein;

56 [(5)] (9) "Franchisee", a person to whom a franchise is granted;

57 [(6)] (10) "Franchisor", a person who grants a franchise to another
58 person;

59 (11) "Good faith", the duty of each party to any franchise and all
60 officers, employees, or agents thereof, to act in a fair and equitable
61 manner toward each other so as to guarantee the one party freedom
62 from coercion, intimidation, or threat of coercion or intimidation from
63 the other party;

64 (12) "Importer", a person who has written authorization from a
65 foreign manufacturer of a line-make of motor vehicles to grant a
66 franchise to a motor vehicle dealer in this state with respect to that
67 line-make;

68 (13) "Line-make", a collection of models, series, or groups of
69 motor vehicles manufactured by or for a particular manufacturer,
70 distributor or importer offered for sale, lease or distribution pursuant
71 to a common brand name or mark; provided, however:

72 (a) Multiple brand names or marks may constitute a single line-
73 make, but only when included in a common dealer agreement and the
74 manufacturer, distributor or importer offers such vehicles bearing the
75 multiple names or marks together only, and not separately, to its
76 authorized dealers; and

77 (b) Motor vehicles bearing a common brand name or mark may
78 constitute separate line-makes when pertaining to motor vehicles
79 subject to separate dealer agreements or when such vehicles are
80 intended for different types of use;

81 (14) "Manufacturer", any person, whether a resident or
82 nonresident of this state, who manufactures or assembles motor
83 vehicles or who manufactures or installs on previously assembled truck
84 chassis special bodies or equipment which, when installed, form an
85 integral part of the motor vehicle and which constitute a major
86 manufacturing alteration. The term "manufacturer" includes a central
87 or principal sales corporation or other entity, other than a franchisee,
88 through which, by contractual agreement or otherwise, it distributes
89 its products;

90 [(7)] **(15)** "Motor vehicle", for the purposes of sections 407.810 to 407.835,
91 any motor-driven vehicle required to be registered pursuant to the provisions of
92 chapter 301, RSMo, except that, motorcycles and all-terrain vehicles as defined
93 in section 301.010, RSMo, shall not be included. The term "motor vehicle" shall
94 also include any engine, transmission, or rear axle, regardless of whether
95 attached to a vehicle chassis, that is manufactured for the installation in any
96 motor-driven vehicle with a gross vehicle weight rating of more than sixteen
97 thousand pounds that is registered for the operations on the highways of this
98 state under chapter 301, RSMo;

99 [(8)] **(16)** "New", when referring to motor vehicles or parts, means those
100 motor vehicles or parts which have not been held except as inventory, as that
101 term is defined in subdivision (4) of section 400.9-109, RSMo;

102 [(9)] **(17)** "Person", a natural person, sole proprietor, partnership,
103 corporation, or any other form of business entity or organization;

104 **(18)** "Principal investor", the owner of the majority interest of
105 any franchisee;

106 **(19)** "Reasonable", shall be based on the circumstances of a
107 franchisee in the market served by the franchisee;

108 **(20)** "Require", to impose upon a franchisee a provision not
109 required by law or previously agreed to by a franchisee in a franchise
110 agreement;

111 **(21)** "Successor manufacturer", any manufacturer that succeeds,
112 or assumes any part of the business of, another manufacturer, referred
113 to as the "predecessor manufacturer", as the result of:

114 (a) A change in ownership, operation, or control of the
115 predecessor manufacturer by sale or transfer of assets, corporate stock,
116 or other equity interest, assignment, merger, consolidation,
117 combination, joint venture, redemption, court-approved sale, operation
118 of law, or otherwise;

119 (b) The termination, suspension or cessation of a part or all of
120 the business operations of the predecessor manufacturer;

121 (c) The noncontinuation of the sale of the product line; or

122 (d) A change in distribution system by the predecessor
123 manufacturer, whether through a change in distributor or the
124 predecessor manufacturer's decision to cease conducting business
125 through a distributor altogether.

407.817. 1. **Notwithstanding any provision of a franchise to the**
2 **contrary**, for purposes of [this section] **the MVFP act**, "relevant market area"
3 means:

4 (1) For a proposed new motor vehicle dealer or a new motor vehicle dealer
5 who plans to **locate or** relocate his or her place of business in a county having
6 a population which is greater than one hundred thousand, the area within a
7 radius of [six] **eight** miles of the intended site of the proposed or relocated
8 dealer. The [six-mile] **eight-mile** distance shall be determined by measuring the
9 distance between the nearest surveyed boundary of the existing new motor vehicle
10 dealer's principal place of business and the nearest surveyed boundary line of the
11 proposed or relocated new motor vehicle dealer's principal place of business; or

12 (2) For a proposed new motor vehicle dealer or a new motor vehicle dealer
13 who plans to **locate or** relocate his or her place of business in a county having
14 a population which is not greater than one hundred thousand, the area within a
15 radius of [ten] **fifteen** miles of the intended site of the proposed or relocated
16 dealer[, or the county line, whichever is closer to the intended site]. The
17 [ten-mile] **fifteen-mile** distance shall be determined by measuring the distance
18 between the nearest surveyed boundary line of the existing new motor vehicle
19 dealer's principal place of business and the nearest surveyed boundary line of the
20 proposed or relocated new motor vehicle dealer's principal place of business.

21 2. As used in this section, "relocate" and "relocation" shall not include the
22 relocation of a new motor vehicle dealer within two miles of its established place
23 of business.

24 3. Before a franchisor enters into a franchise establishing **an additional**
25 **franchise, reopening a previously existing franchise**, or relocating [a new
26 motor vehicle dealer] **an existing franchise** within a relevant market area
27 where the same line-make is represented, the franchisor shall give written notice
28 to each [new motor vehicle dealer] **franchisee** of the same line-make in the
29 relevant market area of its intention to establish an additional [dealer]
30 **franchise, reopen a previously existing franchise**, or [to] relocate an
31 existing [dealer] **franchise** within that relevant market area. **Such notice**
32 **shall state:**

33 (1) **The specific location at which the additional, reopened, or**
34 **relocated franchise will be established; and**

35 (2) **The date on or after which the franchisor intends to be**
36 **engaged in business with the additional, reopened, or relocated**

37 **franchise at the proposed location.**

38 4. Within thirty days after receiving the notice provided for in subsection
39 3 of this section, or within thirty days after the end of any appeal procedure
40 provided by the franchisor, a [new motor vehicle dealer] **franchisee to whom**
41 **notice was required in subsection 3 of this section** may bring an action
42 pursuant to section 407.822 to determine whether good cause exists for [the]
43 establishing **an additional franchise, reopening a previously existing**
44 **franchise**, or relocating [of a proposed new motor vehicle dealer] **an existing**
45 **franchise**.

46 5. This section shall not apply to the reopening or replacement in a
47 relevant market area of a closed [dealership] **franchise** that has been closed
48 within the preceding year, if the established place of business of the reopened or
49 replacement [dealer] **franchise** is within two miles of the established place of
50 business of the closed [dealership] **franchise and only if the reopened or**
51 **replaced franchise is offered to the franchisee who had previously**
52 **operated the closed franchise within the preceding year if that**
53 **franchise had not been terminated under the provisions of the MVFP**
54 **act or had not voluntarily closed the franchise.**

55 6. In determining whether good cause exists for establishing **an**
56 **additional franchise, reopening a previously existing franchise**, or
57 relocating [an additional new motor vehicle dealer] **a franchise** for the same
58 line-make, the [court] **administrative hearing commission** shall take into
59 consideration [the existing] **all relevant** circumstances, including, but not
60 limited to, the following:

61 (1) **The size and permanency of the investment and obligations**
62 **incurred by the existing franchisees of the same line-make in the**
63 **relevant market area; and any damage that such existing franchisees**
64 **may suffer from the establishment, reopening, or relocation of a**
65 **franchise into the relevant market area;**

66 (2) **The effect on the retail motor vehicle business and the consuming**
67 **public in the relevant market area;**

68 (3) **Whether it is injurious or beneficial to the public welfare;**

69 (4) **Whether the [new motor vehicle dealers] existing franchisees** of the
70 same line-make in that relevant market area are providing adequate competition
71 and convenient consumer care for the motor vehicles of that line-make in the
72 **relevant** market area, including the adequacy of motor vehicle sales and

73 qualified service personnel;

74 (5) Whether the establishment, **reopening**, or relocation of [the new
75 motor vehicle dealer] **a franchise** would promote competition; **and whether the**
76 **benefits to the public and the franchisor from any such increased**
77 **competition outweigh the harm to the existing franchisees in the**
78 **relevant market area;**

79 (6) Growth or decline of the population and the number of new motor
80 vehicle registrations in the relevant market area; and

81 (7) **The effect on the reopening or relocating [dealer] franchisee of a**
82 **denial of its relocation into the relevant market area.**

83 7. The remedies and relief available pursuant to **this section [407.835**
84 **shall apply to this section] are not exclusive and are in addition to those**
85 **provided in section 407.835 or otherwise permitted by law or equity.**

407.818. No franchisor shall engage in business in this state
2 without a license therefor as provided in sections 301.550 to 301.573. No
3 motor vehicle, foreign or domestic, may be sold, leased, or offered for
4 sale or lease in this state unless the franchisor, which issues a
5 franchise to a franchisee in this state, is licensed under sections 301.550
6 to 301.573. No franchisor shall modify the area of responsibility to
7 avoid the requirements of section 407.817 or 407.833, or any other
8 section of the MVFP act. Each franchisor shall renew its license
9 annually by the date specified by the department of revenue.

407.819. 1. Notwithstanding any provision in a franchise to the
2 contrary, no successor manufacturer shall, for a period of two years
3 from the date of acquisition of control by that successor manufacturer
4 of a line-make from a predecessor manufacturer, offer a franchise to
5 any person for a line-make of a predecessor manufacturer in any
6 portion of the relevant market area in which the predecessor
7 manufacturer previously cancelled, terminated, noncontinued, failed to
8 renew, or otherwise ended a franchise agreement with a franchisee who
9 had a franchise facility in that relevant market area without first
10 offering the franchise to the former franchisee at no cost, unless:

11 (1) Within sixty days of the former franchisee's cancellation,
12 termination, noncontinuance, or nonrenewal, the predecessor
13 manufacturer had consolidated the line-make with another of its line-
14 makes for which the predecessor manufacturer had a franchisee with
15 a then-existing franchise facility in that relevant market area;

16 **(2) The successor manufacturer has paid the former franchisee**
17 **the fair market value of the former franchisee's motor vehicle**
18 **dealership in accordance with this section;**

19 **(3) The predecessor manufacturer successfully terminated the**
20 **former franchisee under subdivision (5) of section 407.825.**

21 **2. For purposes of this section, the fair market value of a former**
22 **franchisee's motor vehicle dealership shall be calculated as of the date**
23 **of the following that yields the highest fair market value: the date the**
24 **predecessor manufacturer announced the action that resulted in the**
25 **cancellation, termination, noncontinuance, or nonrenewal; the date the**
26 **action that resulted in cancellation, termination, noncontinuance, or**
27 **nonrenewal became final; or the date twelve months prior to the date**
28 **that the predecessor manufacturer announced the action that resulted**
29 **in the cancellation, termination, noncontinuance, or nonrenewal.**

407.822. 1. Any party seeking relief pursuant to the provisions of sections
2 407.810 to 407.835 may file [an application for a hearing] **a complaint** with the
3 administrative hearing commission within the time periods specified in this
4 section. The [application for a hearing] **complaint** shall comply with the
5 requirements for a request for agency action set forth in chapter 536,
6 RSMo. Simultaneously, with the filing of the [application for a hearing]
7 **complaint** with the administrative hearing commission, the [applicant]
8 **petitioner** shall send by certified mail, return receipt requested, a copy of the
9 [application] **complaint** to the party or parties against whom relief is
10 sought. Upon receiving a timely [application for a hearing] **complaint**, the
11 administrative hearing commission shall enter an order fixing a date, time and
12 place for a hearing on the record. The administrative hearing commission shall
13 send by certified mail, return receipt requested, a copy of the order to the party
14 seeking relief and **a copy of the order and complaint** to the party or parties
15 against whom relief is sought. The order shall also state that the party against
16 whom relief is sought shall not proceed with the initiation of its activity or
17 activities until the administrative hearing commission issues its final decision or
18 order, and the party against whom relief is sought shall, within thirty days of
19 such order, file an answer or other responsive pleading directed to each claim for
20 relief set forth in the [application for hearing] **complaint**. Failure to answer or
21 otherwise respond within such time frame may be deemed by the administrative
22 hearing commission as an admission of the grounds for relief set forth in the

23 [application for hearing] **complaint.**

24 2. Unless otherwise expressly provided in sections 407.810 to 407.835, the
25 provisions of chapter 536, RSMo, shall govern hearings and prehearing
26 procedures conducted pursuant to the authority of this section. Any party may
27 obtain discovery in the same manner, and under the same conditions and
28 requirements, as is or may hereafter be provided for with respect to discovery in
29 civil actions by rule of the supreme court of Missouri for use in the circuit courts,
30 and the administrative hearing commission may enforce discovery by the same
31 methods as provided by supreme court rule for use in civil cases. The
32 administrative hearing commission shall issue a final decision or order, in
33 proceedings arising pursuant to the provisions of sections 407.810 to 407.835,
34 within ninety days from the conclusion of the hearing. In any proceeding
35 initiated pursuant to sections 407.810 to 407.835 involving a matter requiring a
36 franchisor to show good cause for any intended action being protested by a
37 franchisee, the franchisor shall refrain from taking the protested action if, after
38 a hearing on the matter before the administrative hearing commission, the
39 administrative hearing commission determines that good cause does not exist for
40 the franchisor to take such action. The franchisee may, if necessary, seek
41 enforcement of the decision of the administrative hearing commission pursuant
42 to the provisions of section 407.835. Venue for such proceedings shall be in the
43 circuit court of Cole County, Missouri, or in the circuit court of the county in
44 which the franchisee resides or operates the franchise business. In determining
45 any relief necessary for enforcement of the decision of the administrative hearing
46 commission, the court shall defer to the commission's factual findings, and review
47 shall be limited to a determination of whether the commission's decision was
48 authorized by law and whether the commission abused its discretion. Any final
49 decisions of the administrative hearing commission shall be subject to review
50 pursuant to a petition for review to be filed in the court of appeals in the district
51 in which the hearing, or any part of the hearing, is held and by delivery of copies
52 of the petition to each party of record, within thirty days after the mailing or
53 delivery of the final decision and notice of the final decision in such a
54 case. Appeal of the administrative hearing commission's decision pursuant to
55 this section shall not preclude any action authorized by section 407.835, brought
56 in a court of competent jurisdiction, requesting an award of legal or equitable
57 relief, provided that if such an action is brought solely for the purpose of
58 enforcing a decision of the administrative hearing commission which is on appeal

59 pursuant to this subsection, the court in which such action is pending may hold
60 in abeyance its judgment pending issuance of a decision by the court of
61 appeals. Review pursuant to this section shall be exclusive and decisions of the
62 administrative hearing commission reviewable pursuant to this section shall not
63 be reviewable in any other proceeding, and no other official or court shall have
64 power to review any such decision by an action in the nature of mandamus or
65 otherwise, except pursuant to the provisions of this section. The party seeking
66 review shall be responsible for the filing of the transcript and record of all
67 proceedings before the administrative hearing commission with the appropriate
68 court of appeals.

69 3. Any franchisee receiving a notice from a franchisor pursuant to the
70 provisions of sections 407.810 to 407.835, or any franchisee adversely affected by
71 a franchisor's acts or proposed acts described in the provisions of sections 407.810
72 to 407.835, shall be entitled to file [an application for a hearing] **a complaint**
73 before the administrative hearing commission for a determination as to whether
74 the franchisor has good cause for its acts or proposed acts.

75 4. Not less than sixty days before the effective date of the initiation of any
76 enumerated act pursuant to subdivisions (5), (6), (7) and (14) of [subsection 1 of]
77 section 407.825, a franchisor shall give written notice to the affected franchisee
78 or franchisees, by certified mail, return receipt requested, except as follows:

79 (1) Upon the initiation of an act pursuant to subdivision (5) of [subsection
80 1 of] section 407.825, such notice shall be given not less than fifteen days before
81 the effective date of such act only if the grounds for the notice include the
82 following:

83 (a) Transfer of any ownership or interest in the franchised dealership
84 without the consent of the motor vehicle franchisor;

85 (b) Material misrepresentation by the motor vehicle franchisee in applying
86 for the franchise **that substantially and adversely affects the franchisor;**

87 (c) Insolvency of the motor vehicle franchisee or the filing of any petition
88 by or against the motor vehicle franchisee under any bankruptcy or receivership
89 law **that is not vacated within twenty days from the institution thereof;**

90 (d) Any unfair business practice by the motor vehicle franchisee after the
91 motor vehicle franchisor has issued a written **thirty-day** warning to the motor
92 vehicle franchisee to desist from such practice **and the franchisee has failed**
93 **to desist from the practice after having received the written thirty-day**
94 **warning;**

95 (e) Conviction of the motor vehicle franchisee of a crime which is a felony;

96 (f) Failure of the motor vehicle franchisee to conduct customary sales and
97 service operations during customary business hours for at least seven consecutive
98 business days unless such closing is due to an act of God, strike or labor difficulty
99 or other cause over which the motor vehicle franchisee has no control; or

100 (g) Revocation of the motor vehicle franchisee's license;

101 (2) Upon initiation of an act pursuant to subdivision (7) of [subsection 1
102 of] section 407.825, such notice shall be given within sixty days of the franchisor's
103 receipt of a written proposal to consummate such sale or transfer and the receipt
104 of all necessary information and documents generally used by the franchisor to
105 conduct its review. The franchisor shall acknowledge in writing to the applicant
106 the receipt of the information and documents and if the franchisor requires
107 additional information or documents to complete its review, the franchisor shall
108 notify the applicant within fifteen days of the receipt of the information and
109 documents. If the franchisor fails to request additional information and
110 documents from the applicant within fifteen days after receipt of the initial forms,
111 the sixty-day time period for approval shall be deemed to run from the initial
112 receipt date. Otherwise, the sixty-day time period for approval shall run from
113 receipt of the supplemental requested information. In no event shall the total
114 time period for approval exceed [seventy-five] **ninety** days from the date of the
115 receipt of [all necessary information and documents generally used by the
116 franchisor to conduct its review] **the written proposal**. The franchisor's notice
117 of disapproval shall also specify the reasonable standard which the franchisor
118 contends is not satisfied and the reason the franchisor contends such standard
119 is not satisfied. Failure on the part of the franchisor to provide such notice shall
120 be conclusively deemed an approval by the franchisor of the proposed sale or
121 transfer to the proposed transferee. A franchisee's application for a hearing shall
122 be filed with the administrative hearing commission within twenty days from
123 receipt of such franchisor's notice;

124 (3) Pursuant to paragraphs (a) and (b) of subdivision (14) of [subsection
125 1 of] section 407.825, such notice shall be given within sixty days of the
126 franchisor's receipt of a deceased or incapacitated franchisee's designated family
127 member's intention to succeed to the franchise or franchises or of the franchisor's
128 receipt of the personal and financial data of the designated family member,
129 whichever is later.

130 5. A franchisor's notice to a franchisee or franchisees pursuant to

131 subdivisions (5), (6), (7) and (14) of [subsection 1 of] section 407.825 shall contain
132 a statement of the particular grounds supporting the intended action or activity
133 which shall include any reasonable standards which were not satisfied. The
134 notice [shall also contain at a minimum] **is not effective unless it also**
135 **contains**, on the first page thereof, a conspicuous statement which reads as
136 follows: "NOTICE TO FRANCHISEE: YOU MAY BE ENTITLED TO FILE A
137 PROTEST WITH THE MISSOURI ADMINISTRATIVE HEARING COMMISSION
138 IN JEFFERSON CITY, MISSOURI, AND HAVE A HEARING IN WHICH YOU
139 MAY PROTEST THE CONTENTS OF THIS NOTICE. ANY ACTION MUST BE
140 FILED WITHIN [TWENTY] **THIRTY** DAYS FROM RECEIPT OF THIS
141 NOTICE. **YOU ALSO HAVE THE RIGHT TO DEMAND NONBINDING**
142 **MEDIATION. YOUR DEMAND FOR MEDIATION MAY BE MAILED TO**
143 **THE ADDRESS SHOWN ON THIS NOTICE. FOR FURTHER**
144 **INFORMATION, CONTACT YOUR ATTORNEY AND REFER TO**
145 **SECTIONS 407.810 TO 407.835, RSMO."**

146 6. When more than one [application for a hearing] **complaint** is filed
147 with the administrative hearing commission, the administrative hearing
148 commission may consolidate the applications into one proceeding to expedite the
149 disposition of all relevant issues.

150 7. **Unless otherwise specifically required by another provision of**
151 **the MVFP act**, in all proceedings [before the administrative hearing
152 commission] pursuant to [this section, section 407.825 and section 621.053,
153 RSMo, where the franchisor is required to give notice pursuant to subsection 4
154 of this section] **sections 407.810 to 407.835**, the franchisor shall have the
155 burden of proving by a preponderance of the evidence that **it has acted in good**
156 **faith, that all required notices were given, and that** good cause exists for
157 its actions. [In all other actions, the franchisee shall have the burden of proof.]

158 8. **If a franchisee prevails in an action against a franchisor under**
159 **any provision of sections 407.810 to 407.835**, then the franchisee shall
160 also have a cause of action against the franchisor for damages and
161 reasonable expenses of litigation, including, but not limited to,
162 depositions, transcripts, expert witnesses, and attorney fees.

163 9. A franchisee may mail a demand for mediation to its
164 franchisor at any time after it receives any notice from a franchisor as
165 required by any provision of the MVFP act. In addition, prior to,
166 contemporaneous with, or after the filing of a complaint with the

167 administrative hearing commission, a franchisee may mail a demand
168 for mediation to its franchisor for any violation by the franchisor of
169 any provision of the MVFP act. The mailing of the demand for
170 mediation is effective when mailed to the address shown on the notice
171 from the franchisor, the address shown on the franchise agreement, the
172 address of the franchisor shown on its license with the department of
173 revenue, the address of the franchisor's registered agent in this state,
174 or the address of its attorney in a proceeding pending at the
175 administrative hearing commission concerning the subject of the
176 demand for mediation. The demand for mediation shall contain a short
177 statement of the dispute and the relief sought by the franchisee;
178 however, the contents of the demand are not jurisdictional.

179 10. The mailing of a demand for mediation stays any time period
180 for the franchisee to initiate any action under the MVFP act that is the
181 subject of the dispute described in the demand for mediation. If the
182 parties fail to resolve the matter in dispute after meeting with the
183 mediator, then the time period for filing any action with the
184 administrative hearing commission shall start on the first business day
185 after the date of the last date of any meeting with the mediator.

186 11. If a proceeding is pending before the administrative hearing
187 commission concerning the subject of the demand for mediation, the
188 franchisee shall also file a copy of the demand for mediation with the
189 administrative hearing commission. The filing of a copy of the demand
190 for mediation with the administrative hearing commission shall stay
191 any further action by the administrative hearing commission, other
192 than the issuance of the order required of the administrative hearing
193 commission under subsection 1 of this section informing the franchisor
194 that it shall not proceed with the initiation of its activity or activities
195 until the administrative hearing commission issues its final decision or
196 order. If the matter is not resolved after the meeting with the
197 mediator, then either party may inform the administrative hearing
198 commission that the matter is not resolved and the administrative
199 hearing commission shall issue its order terminating the stay of its
200 proceeding.

201 12. Within five business days after the date of receipt of the
202 demand for mediation, the franchisor shall contact the franchisee or its
203 legal representative reflected in the demand for mediation to exchange

204 **suggested lists of mediators. The parties shall mutually accept a**
205 **mediator within two business days after the date of exchanging**
206 **suggested lists of mediators. If the parties cannot agree on a mediator,**
207 **then the presiding judge in Cole County or in the circuit court for the**
208 **county in which the franchisee does business shall appoint the**
209 **mediator. Within twenty days after the receipt of the demand for**
210 **mediation, the parties shall meet with the mediator for the purpose of**
211 **attempting to resolve the dispute. The meeting shall take place in this**
212 **state at a location designated by the mediator. The mediator may**
213 **extend the date of the meeting upon the agreement of the parties or**
214 **upon good cause shown by either party.**

215 **13. The director of revenue shall require each franchisor to**
216 **establish and maintain a panel of mediators who may serve as**
217 **mediators for disputes that may arise in this state with its franchisees.**

407.825. Notwithstanding the terms of any franchise agreement **to the**
2 **contrary**, the performance, whether by act or omission, by a motor vehicle
3 franchisor, **whether directly or indirectly through an agent, employee,**
4 **affiliate, common entity, or representative, or through an entity**
5 **controlled by a franchisor**, of any or all of the following acts enumerated in
6 this section are hereby defined as unlawful practices, the remedies for which are
7 set forth in section 407.835:

8 (1) To engage in any conduct which is capricious[, in bad faith,] **or not**
9 **in good faith** or unconscionable and which causes damage to a motor vehicle
10 franchisee or to the public; provided, that good faith conduct engaged in by motor
11 vehicle franchisors as sellers of new motor vehicles or parts or as holders of
12 security interest therein, in pursuit of rights or remedies accorded to sellers of
13 goods or to holders of security interests pursuant to the provisions of chapter 400,
14 RSMo, uniform commercial code, shall not constitute unfair practices pursuant
15 to sections 407.810 to 407.835;

16 (2) To coerce, **attempt to coerce, require or attempt to require** any
17 motor vehicle franchisee to accept delivery of any new motor vehicle or vehicles,
18 equipment, **tools**, parts or accessories therefor, or any other commodity or
19 commodities which such motor vehicle franchisee has not ordered after such
20 motor vehicle franchisee has rejected such commodity or commodities, **or which**
21 **is not required by law or the franchise agreement**. It shall not be deemed
22 a violation of this section for a motor vehicle franchisor to require a motor vehicle

23 franchisee to have an inventory of parts, tools, and equipment reasonably
24 necessary to service the motor vehicles sold by a motor vehicle franchisor; or new
25 motor vehicles reasonably necessary to meet the demands of dealers or the public
26 or to display to the public the full line of a motor vehicle franchisor's product line;

27 (3) To **[unreasonably] withhold, reduce, delay, or** refuse to deliver in
28 reasonable quantities and within a reasonable time after receipt of orders for new
29 motor vehicles, such motor vehicles as are so ordered and as are covered by such
30 franchise and as are specifically publicly advertised by such motor vehicle
31 franchisor to be available for immediate delivery; provided, however, the failure
32 to deliver any motor vehicle shall not be considered a violation of sections 407.810
33 to 407.835 if such failure is due to an act of God, work stoppage, or delay due to
34 a strike or labor difficulty, shortage of products or materials, freight delays,
35 embargo or other **[cause] causes** of which such motor vehicle franchisor shall
36 have no control;

37 (4) To coerce, **attempt to coerce, require or attempt to require** any
38 motor vehicle franchisee to enter into any agreement with such motor vehicle
39 franchisor **or its agent, employee, affiliate, or representative, or a person**
40 **controlled by the franchisor** or to do any other act prejudicial to such motor
41 vehicle franchisee[, by threatening to cancel any franchise or any contractual
42 agreement existing between such motor vehicle franchisor and motor vehicle
43 franchisee; provided, however, that notice in good faith to any motor vehicle
44 franchisee of such motor vehicle franchisee's violation of any provisions of such
45 franchise or contractual agreement shall not constitute a violation of sections
46 407.810 to 407.835];

47 (5) To terminate, cancel [or], refuse to continue, **or refuse to renew** any
48 franchise without good cause, **[directly or indirectly through the actions of the**
49 **franchisor,]** unless such new motor vehicle franchisee, **without good cause,**
50 substantially defaults in the performance of such franchisee's reasonable [and],
51 lawful, **and material** obligations under such franchisee's franchise[, or such new
52 motor vehicle franchisor discontinues the sale in the state of Missouri of such
53 franchisor's products which are the subject of the franchise]. In determining
54 whether good cause exists, the administrative hearing commission shall take into
55 consideration **[the existing] all relevant** circumstances, including, but not
56 limited to, the following factors:

57 (a) **[The franchisee's sales in relation to sales in the market;**

58 (b) **The franchisee's investment and obligations;**

- 59 (c) Injury to the public welfare;
- 60 (d) The adequacy of the franchisee's service facilities, equipment, parts
61 and personnel in relation to those of other franchisees of the same line-make;
- 62 (e) Whether warranties are being honored by the franchisee;
- 63 (f) The parties' compliance with their franchise agreement;
- 64 (g) The desire of a franchisor for market penetration or a market study,
65 if any, prepared by the franchisor or franchisee are two factors which may be
66 considered;
- 67 (h) The harm to the franchisor;] **The amount of business transacted**
68 **by the franchisee;**
- 69 **(b) The investments necessarily made and obligations incurred**
70 **by the franchisee, including but not limited to goodwill, in the**
71 **performance of its duties under the franchise agreement, together with**
72 **the duration and permanency of such investments and obligations;**
- 73 **(c) The potential for harm and inconvenience to consumers as a**
74 **result of disruption of the business of the franchisee;**
- 75 **(d) The franchisee's failure to provide adequate service facilities,**
76 **equipment, parts, and qualified service personnel;**
- 77 **(e) The franchisee's failure to perform warranty work on behalf**
78 **of the manufacturer, subject to reimbursement by the manufacturer;**
- 79 **(f) The franchisee's failure to substantially comply, in good faith,**
80 **with requirements of the franchise that are determined to be**
81 **reasonable, lawful, and material;**
- 82 **(g) The franchisor's failure to honor its requirements under the**
83 **franchise;**
- 84 **(h) The potential harm to the area that the franchisee serves;**
- 85 **(i) The demographic and geographic characteristics of the area**
86 **the franchisee serves; and**
- 87 **(j) The harm to the franchisor;**
- 88 (6) To prevent by contract or otherwise, any motor vehicle franchisee from
89 changing the capital structure of the franchisee's franchise [of such motor vehicle
90 franchisee] or the means by or through which the franchisee finances the
91 operation of the franchisee's franchise, provided the motor vehicle franchisee at
92 all times meets any reasonable capital standards agreed to between the motor
93 vehicle franchisee and the motor vehicle franchisor and grants to the motor
94 vehicle franchisor a purchase money security interest in the new motor vehicles,

95 new parts and accessories purchased from the motor vehicle franchisor;

96 (7) (a) To prevent, by contract or otherwise, any sale or transfer of a
97 franchisee's franchise or [franchises or] interest or management thereof; provided,
98 if the franchise specifically permits the franchisor to approve or disapprove any
99 such proposed sale or transfer, a franchisor shall only be allowed to disapprove
100 a proposed sale or transfer if the interest being sold or transferred when added
101 to any other interest owned by the transferee constitutes fifty percent or more of
102 the ownership interest in the franchise and if the proposed transferee fails to
103 satisfy any standards of the franchisor which are in fact normally relied upon by
104 the franchisor prior to its entering into a franchise, and which relate to the
105 [proposed management or ownership of the franchise operations or to the]
106 qualification, capitalization, integrity or character of the proposed transferee and
107 which are reasonable. A franchisee **or proposed franchisee** may request, at
108 any time, that the franchisor provide a copy of the standards which are normally
109 relied upon by the franchisor to evaluate a proposed sale or transfer and a
110 proposed transferee;

111 (b) The franchisee and the prospective franchisee shall cooperate [fully]
112 with the franchisor in providing information relating to the prospective
113 transferee's qualifications, capitalization, integrity and character;

114 (c) In the event of a proposed sale or transfer of a franchise, the franchisor
115 shall be permitted to exercise a right of first refusal to acquire the franchisee's
116 assets or ownership if:

117 a. The franchise agreement permits the franchisor to exercise a right of
118 first refusal to acquire the franchisee's assets or ownership in the event of a
119 proposed sale or transfer;

120 b. Such sale or transfer is conditioned upon the franchisor or franchisee
121 entering a franchise agreement with the proposed transferee;

122 c. The exercise of the right of first refusal shall result in the franchisee
123 and the franchisee's owners receiving the same or greater consideration and the
124 same terms and conditions as contracted to receive in connection with the
125 proposed sale or transfer;

126 d. The sale or transfer does not involve the sale or transfer to an
127 immediate member or members of the family of one or more franchisee owners,
128 defined as a spouse, child, grandchild, spouse of a child or grandchild, brother,
129 sister or parent of the franchisee owner, or to the qualified manager, defined as
130 an individual who has been employed by the franchisee for at least two years and

131 who otherwise qualifies as a franchisee operator, or a partnership or corporation
132 controlled by such persons; and

133 e. The franchisor agrees to pay the reasonable expenses, including
134 attorney's fees which do not exceed the usual, customary and reasonable fees
135 charged for similar work done for other clients, incurred by the proposed
136 transferee prior to the franchisor's exercise of its right of first refusal in
137 negotiating and implementing the contract for the proposed sale or transfer of the
138 franchise or the franchisee's assets. Notwithstanding the foregoing, no payment
139 of such expenses and attorney's fees shall be required if the franchisee has not
140 submitted or caused to be submitted an accounting of those expenses within
141 fourteen days of the franchisee's receipt of the franchisor's written request for
142 such an accounting. Such accounting may be requested by a franchisor before
143 exercising its right of first refusal;

144 (d) For determining whether good cause exists for the purposes of this
145 subdivision, the administrative hearing commission shall take into consideration
146 **[the existing] all relevant** circumstances, including, but not limited to, the
147 following factors:

148 a. Whether the franchise agreement specifically permits the franchisor to
149 approve or disapprove any proposed sale or transfer;

150 b. Whether the interest to be sold or transferred when added to any other
151 interest owned by the proposed transferee constitutes fifty percent or more of the
152 ownership interest in the franchise;

153 c. Whether the proposed transferee fails to satisfy **[any] the** standards of
154 the franchisor which are in fact normally relied upon by the franchisor prior to
155 its entering into a franchise, and which related to the **[proposed management or**
156 **ownership of the franchise operations or to the]** qualification, capitalization,
157 integrity or character of the proposed transferee **and** which are **lawful and**
158 reasonable;

159 d. **[Injury to the public welfare] The amount of business transacted**
160 **by the franchisee;**

161 e. The **[harm to the franchisor] investments and obligations incurred**
162 **by the franchisee, including but not limited to goodwill, in the**
163 **performance of its duties under the franchise agreement, together with**
164 **the duration and permanency of such investments and obligations;**

165 f. **The investments and obligations that the proposed transferee**
166 **is prepared to make in the business;**

167 **g. The potential for harm and inconvenience to consumers as a**
168 **result of the franchisor's decision;**

169 **h. The franchisor's failure to honor its requirements under the**
170 **franchise;**

171 **i. The potential harm to the area that the franchisee serves;**

172 **j. The ability or willingness of the franchisee to continue in the**
173 **business if the proposed transfer is not permitted;**

174 **k. The demographic and geographic characteristics of the area**
175 **the franchisee serves; and**

176 **l. The harm to the franchisor;**

177 (8) To prevent by contract or otherwise any motor vehicle franchisee from
178 changing the executive management of the motor vehicle franchisee's business,
179 [except that any attempt by a] **unless the** motor vehicle franchisor [to
180 demonstrate by giving reasons] **demonstrates** that such change in executive
181 management will be detrimental to the distribution of the motor vehicle
182 franchisor's motor vehicles [shall not constitute a violation of this subdivision];

183 (9) To impose unreasonable standards of performance upon a motor
184 vehicle franchisee **or to require, attempt to require, coerce or attempt to**
185 **coerce a franchisee to adhere to performance standards that are not**
186 **applied uniformly to other similarly situated franchisees;**

187 (10) To require, **attempt to require, coerce, or attempt to coerce** a
188 motor vehicle franchisee at the time of entering into a franchise **or any other**
189 arrangement to assent to a release, assignment, novation, waiver or estoppel
190 which would relieve any person from liability imposed by sections 407.810 to
191 407.835;

192 (11) To prohibit directly or indirectly the right of free association among
193 motor vehicle franchisees for any lawful purpose;

194 (12) To provide any term or condition in any lease or other agreement
195 ancillary or collateral to a franchise, **including, but not limited to, any**
196 **agreement with a common entity or any person required by the**
197 **franchisor or controlled by or affiliated with the franchisor**, which term
198 or condition directly or indirectly violates the provisions of sections 407.810 to
199 407.835;

200 (13) Upon any termination, cancellation [or], refusal to continue, **or**
201 **refusal to renew** any franchise or any discontinuation of any line-make or parts
202 or products related to such line-make [by a franchisor, fail], **failing** to pay

203 reasonable compensation to a franchisee as follows:

204 (a) **The franchisee's net acquisition cost** for any new, undamaged
205 and unsold vehicle in the franchisee's inventory of either the current model year
206 or **one year-prior model year** purchased from the franchisor [within one
207 hundred twenty days] **or another franchisee of the same line-make in the**
208 **ordinary course of business** prior to receipt of a notice of termination or
209 nonrenewal, provided the vehicle has less than [five hundred] **seven hundred**
210 **fifty** miles registered on the odometer, including mileage incurred in delivery
211 from the franchisor or in transporting the vehicle between dealers for sale[, at the
212 dealer's net acquisition cost, plus any cost to the dealer for returning the vehicle
213 inventory to the franchisor];

214 (b) The franchisee's cost of each new, unused, undamaged and unsold part
215 or accessory if the part or accessory is in the current parts catalog, less applicable
216 allowances[, plus five percent of the catalog price of the part for the cost of
217 packing and returning the part to the franchisor]. In the case of sheet metal, a
218 comparable substitute for the original package may be used. Reconditioned or
219 core parts shall be valued at their core value, the price listed in the current parts
220 catalog or the amount paid for expedited return of core parts, whichever is higher.
221 If the part or accessory was purchased by the franchisee from an outgoing
222 authorized franchisee, the franchisor shall purchase the part **or accessory** for
223 [either] the price in the current parts catalog [or the franchisee's actual purchase
224 price of the part, whichever is less]. In the case of parts **or accessories** which
225 no longer appear in the current parts catalog, the franchisor [may] **shall**
226 purchase the [part] **parts or accessories** for [either] the price in the last
227 version of the parts catalog in which the part **or accessory** appeared [or the
228 franchisee's actual purchase price of the part, whichever is less. The franchisee
229 shall maintain accurate records regarding the actual purchase price of parts
230 bought from an outgoing authorized franchisee. In the absence of such records,
231 the franchisor is not required to purchase parts which are not in the current
232 parts catalog];

233 (c) The [depreciated] **fair market** value [determined pursuant to
234 generally accepted accounting principles] of each undamaged sign owned by the
235 franchisee which bears a trademark or trade name used or claimed by the
236 franchisor if the sign was purchased from, or purchased at the request of, the
237 franchisor. **During the first seven years after its purchase, the fair**
238 **market value of each sign shall be the franchisee's costs of purchasing**

239 **the sign, less depreciation, using straight-line depreciation and a seven-**
240 **year life of the asset;**

241 (d) The fair market value of all [special] **equipment**, tools, data
242 processing **programs and** equipment and automotive service equipment owned
243 by the franchisee which were recommended in writing and designated as [special]
244 **equipment**, tools, **data processing programs** and equipment, **and**
245 **automotive service equipment** and purchased from, or purchased at the
246 request of, the franchisor [within three years of the termination of the franchise],
247 if the **equipment**, tools, **programs** and equipment are in usable and good
248 condition, except for reasonable wear and tear. **During the first seven years**
249 **after their purchase, the fair market value of each item of equipment,**
250 **tools, and automotive service equipment shall be the franchisee's costs**
251 **of purchasing the item, less depreciation, using straight-line**
252 **depreciation and a seven-year life of the asset. During the first three**
253 **years after its purchase, the fair market value of each item of required**
254 **data processing programs and equipment shall be the franchisee's cost**
255 **of purchasing the item, less depreciation, using straight-line**
256 **depreciation and a three-year life of the asset;**

257 (e) [Except as provided in paragraph (a) of this subdivision, the cost of
258 transporting,] **In addition to the costs referenced in paragraphs (a) to (d)**
259 **of this subdivision, the franchisor shall pay the franchisee an**
260 **additional five percent for** handling, packing, storing and loading of any
261 property subject to repurchase pursuant to this section [shall not exceed
262 reasonable and customary charges; and], **and the franchisor shall pay the**
263 **shipper for shipping the property subject to repurchase from the**
264 **location of the franchisee to the location directed by the franchisor;**

265 (f) [The franchisor shall pay the franchisee the amounts specified in this
266 subdivision within ninety days after the tender of the property subject to the
267 franchisee providing evidence of good and clear title upon return of the property
268 to the franchisor. The franchisor shall remove the property within one hundred
269 eighty days after the tender of the property from the franchisee's
270 property. Unless previous arrangements have been made and agreed upon, the
271 franchisee is under no obligation to provide insurance for the property left after
272 one hundred eighty days] **The amount remaining to be paid on any**
273 **equipment or service contracts required by or leased from the**
274 **franchisor or a subsidiary or company affiliated with or controlled or**

275 recommended by the franchisor. However, if the franchise agreement
276 is voluntarily terminated by the franchisee, without coercion by the
277 franchisor, then:

278 a. If the amount remaining to be paid on any equipment or
279 service contract is owed to the franchisor, the franchisor shall cancel
280 the obligation rather than paying the amount to the franchisee; and

281 b. If the amount remaining to be paid on any equipment or
282 service contract is owed to a subsidiary or a company affiliated with or
283 controlled or recommended by the franchisor, the franchisor may pay
284 such amount to the subsidiary or the company affiliated with or
285 controlled by the franchisor, but if the franchisor does not pay such
286 amount to the subsidiary or the company affiliated with or controlled
287 by the franchisor, such amount shall be paid to the franchisee by the
288 subsidiary or company affiliated with or controlled by the franchisor;

289 (g) If the dealer leases the dealership facilities, then the
290 franchisor shall be liable for twelve months' payment of the gross rent
291 or the remainder of the term of the lease, whichever is less. If the
292 dealership facilities are not leased, then the franchisor shall be liable
293 for the equivalent of twelve months' payment of gross rent. This
294 paragraph shall not apply when the termination, cancellation, or
295 nonrenewed line was under good cause related to a conviction and
296 imprisonment for a felony involving moral turpitude that is
297 substantially related to the qualifications, function, or duties of a
298 franchisee as well as fraud and voluntary terminations of a
299 franchise. Gross rent is the monthly rent plus the monthly cost of
300 insurance and taxes. Such reasonable rent shall be paid only to the
301 extent that the dealership premises are recognized in the franchise and
302 only if they are used solely for performance in accordance with the
303 franchise and not substantially in excess of those facilities
304 recommended by the manufacturer or distributor. If the facility is used
305 for the operations of more than one franchise, the gross rent
306 compensation shall be adjusted based on the planning volume and
307 facility requirements of the manufacturers, distributors, or branch or
308 division thereof;

309 (h) The franchisor shall pay to the franchisee the amount
310 remaining to be paid on any leases of computer hardware or software
311 that is used to manage and report data to the manufacturer or

312 distributor for financial reporting requirements and the amount
313 remaining to be paid on any manufacturer or distributor required
314 equipment leases, service contracts, and sign leases. The franchisor's
315 obligation shall not exceed one year on any such lease. However, if the
316 franchise agreement is voluntarily terminated by the franchisee,
317 without coercion by the franchisor, then:

318 a. If the amount remaining to be paid is owed to the franchisor,
319 the franchisor shall cancel the obligation rather than paying the
320 amount to the franchisee; and

321 b. If the amount remaining to be paid is owed to a subsidiary or
322 a company affiliated with or controlled or recommended by the
323 franchisor, the franchisor may pay such amount to the subsidiary or
324 the company affiliated with or controlled by the franchisor, subject to
325 the limit of the franchisor's one year obligation, but if the franchisor
326 does not pay such amount to the subsidiary or the company affiliated
327 with or controlled by the franchisor, such amount shall be paid to the
328 franchisee by the subsidiary or company affiliated with or controlled
329 by the franchisor, subject to the limit of the franchisor's one year
330 obligation;

331 (i) In addition to the other payments set forth in this section, if
332 a termination, cancellation, or nonrenewal is premised upon the
333 franchisor discontinuing the sale in this state of a line-make that was
334 the subject of the franchise, then the franchisor shall also be liable to
335 the franchisee for an amount at least equivalent to the fair market
336 value of the franchisee's goodwill for the discontinued line-makes of the
337 motor vehicle franchise on the date immediately preceding the date the
338 franchisor announces the action which results in termination,
339 cancellation, or nonrenewal, whichever amount is higher. At the
340 franchisee's option, the franchisor may avoid paying fair market value
341 of the motor vehicle franchise to the franchisee under this paragraph
342 if the franchisor, or another motor vehicle franchisor under an
343 agreement with the franchisor, offers the franchisee a replacement
344 motor vehicle franchise with terms substantially similar to that offered
345 to other same line-make dealers;

346 (j) The franchisor shall pay the franchisee all amounts incurred
347 by the franchisee to upgrade its facilities that were required by the
348 franchisor within twelve months prior to receipt of a notice of

349 **termination or nonrenewal; however, a franchisee shall not receive any**
350 **benefits under this subdivision if it was terminated for the grounds set**
351 **forth in subdivision (1) of subsection 4 of section 407.822. However, if**
352 **the franchise agreement is voluntarily terminated by the franchisee,**
353 **without coercion by the franchisor, and for a reason other than the**
354 **death or incapacitation of the dealer principal, then the franchisor**
355 **shall have no obligation under this paragraph; and**

356 **(k) The franchisor shall pay the franchisee the amounts specified**
357 **in this subdivision along with any other amounts that may be due to**
358 **the franchisee under the franchise agreement within sixty days after**
359 **the tender of the property subject to the franchisee providing evidence**
360 **of good and clear title upon return of the property to the**
361 **franchisor. The franchisor shall remove the property within sixty days**
362 **after the tender of the property from the franchisee's property. Unless**
363 **previous arrangements have been made and agreed upon, the**
364 **franchisee is under no obligation to provide insurance for the property**
365 **left after sixty days;**

366 **(l) This subdivision shall not apply to a termination, cancellation**
367 **or nonrenewal due to a sale of the assets or stock of the motor vehicle**
368 **dealership;**

369 (14) To prevent or refuse to honor the succession to a franchise or
370 franchises by any legal heir or devisee under the will of a franchisee, under any
371 written instrument filed with the franchisor designating any person as the
372 person's successor franchisee, or pursuant to the laws of descent and distribution
373 of this state; provided:

374 (a) Any designated family member of a deceased or incapacitated
375 franchisee shall become the succeeding franchisee of such deceased or
376 incapacitated franchisee if such designated family member gives the franchisor
377 written notice of such family member's intention to succeed to the franchise or
378 franchises within one hundred twenty days after the death or incapacity of the
379 franchisee, and agrees to be bound by all of the **lawful** terms and conditions of
380 the current franchise agreement, and the designated family member meets the
381 current **lawful and** reasonable criteria generally applied by the franchisor in
382 qualifying franchisees. **In order for the franchisor to claim that any such**
383 **reasonable criteria are generally applied by the franchisor in**
384 **qualifying franchisees, it shall have previously provided a copy to the**

385 **proposed successor franchisee within ten days after receiving the**
386 **proposed successor franchisee's notice.** A franchisee may request, at any
387 time, that the franchisor provide a copy of such criteria generally applied by the
388 franchisor in qualifying franchisees;

389 (b) The franchisor may request from a designated family member such
390 personal and financial data as is reasonably necessary to determine whether the
391 existing franchise agreement should be honored. The designated family member
392 shall supply the personal and financial data promptly upon the request;

393 (c) If the designated family member does not meet the reasonable **and**
394 **lawful** criteria generally applied by the franchisor in qualifying franchisees, the
395 discontinuance of the current franchise agreement shall take effect not less than
396 ninety days after the date the franchisor serves the required notice on the
397 designated family member pursuant to subsection 4 of section 407.822;

398 (d) The provisions of this subdivision shall not preclude a franchisee from
399 designating any person as the person's successor by written instrument filed with
400 the franchisor, and if such an instrument is filed, it alone shall determine the
401 succession rights to the management and operation of the franchise; and

402 (e) For determining whether good cause exists, the administrative hearing
403 commission shall take into consideration [the existing] **all** circumstances,
404 including, but not limited to, the following factors:

405 a. Whether the franchise agreement specifically permits the franchisor to
406 approve or disapprove any successor;

407 b. Whether the proposed successor **substantially** fails to satisfy [any]
408 **the material** standards of the franchisor which are in fact normally relied upon
409 by the franchisor prior to the successor entering into a franchise, and which
410 relate to the proposed management or ownership of the franchise operation or to
411 the qualification, capitalization, integrity or character of the proposed successor
412 and which are **lawful and** reasonable;

413 c. [Injury to the public welfare] **The amount of the business**
414 **transacted by the franchisee;**

415 d. The [harm to the franchisor] **investments in and the obligations**
416 **incurred by the franchisee, including but not limited to goodwill in the**
417 **performance of its duties under the franchise agreement, together with**
418 **the duration and permanency of such investments and obligations;**

419 e. **The investments and obligations that the proposed successor**
420 **franchisee is prepared to make in the business;**

421 **f. The potential for harm and inconvenience to consumers as a**
422 **result of the franchisor's decision;**

423 **g. The franchisor's failure to honor its requirements under the**
424 **franchise;**

425 **h. The potential harm and injury to the public welfare in the**
426 **area that the franchisee serves;**

427 **i. The ability or willingness of the franchisee to continue in the**
428 **business if the proposed transfer is not permitted;**

429 **j. The demographic and geographic characteristics of the area**
430 **the franchisee serves; and**

431 **k. The harm to the franchisor;**

432 (15) To coerce, [threaten, intimidate or] **attempt to coerce, require, or**
433 **attempt to** require a franchisee under any condition affecting or related to a
434 franchise agreement, [or] to waive, limit or disclaim a right that the franchisee
435 may have pursuant to the provisions of sections 407.810 to 407.835. Any
436 contracts or agreements which contain such provisions shall be deemed against
437 the public policy of the state of Missouri and are void and unenforceable. Nothing
438 in this section shall prohibit voluntary settlement agreements **that specifically**
439 **identifies the provisions of sections 407.810 to 407.835 that the**
440 **franchisee is waiving, limiting, or disclaiming;**

441 (16) To initiate any act enumerated in this [subsection] **section** on
442 grounds that it has advised a franchisee of its intention to discontinue
443 representation at the time of a franchisee change or require any franchisee to
444 enter into a site control agreement as a condition to initiating any act
445 enumerated in this [subsection] **section**. Such condition shall not be construed
446 to nullify an existing site control agreement for a franchisee's property;

447 (17) To require, **attempt to require**, coerce, or attempt to coerce any
448 franchisee in this state to refrain from, or to terminate, cancel, or refuse to
449 continue any franchise based upon participation by the franchisee in the
450 management of, investment in or the acquisition of a franchise for the sale of any
451 other line of new vehicle or related products in the same or separate facilities as
452 those of the franchisor. This subdivision does not apply unless the franchisee
453 maintains a reasonable line of credit for each make or line of new vehicle, the
454 franchisee remains in compliance with the franchise and any reasonable facilities
455 requirements of the franchisor, and no change is made in the principal
456 management of the franchisee. The reasonable facilities requirement shall not

457 include any requirement that a franchisee establish or maintain exclusive
458 facilities, personnel, or display space, when such requirements [or any of them]
459 would not otherwise be justified by reasonable business considerations. Before
460 the addition of a line-make to the dealership facilities the franchisee [must] **shall**
461 first request consent of the franchisor, if required by the franchise
462 agreement. Any decision of the franchisor with regard to dualing of two or more
463 franchises shall be granted or denied within sixty days of a written request from
464 the [new vehicle dealer] **franchisee**. The [franchiser's] **franchisor's** failure to
465 respond timely to a dualing request shall be deemed to be approval of the
466 franchisee's request;

467 (18) To fail or refuse to offer to sell to all franchisees for a line-make
468 **reasonable quantities of** every motor vehicle sold or offered for sale to any
469 franchisee of that line-make[.]; however, the failure to deliver any such motor
470 vehicle shall not be considered a violation of this section if the failure [is not
471 arbitrary, or] is due to a [lack of manufacturing capacity or to a strike or labor
472 difficulty, a shortage of materials, a freight embargo or other] cause over which
473 the franchisor has no control. A franchisor may impose reasonable requirements
474 on the franchisee including, but not limited to, the purchase of reasonable
475 quantities of advertising materials, the purchase of special tools required to
476 properly service a motor vehicle, the undertaking of sales person or service person
477 training related to the motor vehicle, the meeting of reasonable display and
478 facility requirements as a condition of receiving a motor vehicle, or other
479 reasonable requirements; provided, that if a franchisor requires a franchisee to
480 purchase essential service tools with a purchase price in the aggregate of more
481 than seventy-five hundred dollars in order to receive a particular model of new
482 motor vehicle, the franchisor shall upon written request provide such franchisee
483 with a good faith estimate in writing of the number of vehicles of that particular
484 model that the franchisee will be allocated during that model year in which the
485 tools are required to be purchased;

486 (19) **To directly or indirectly condition the awarding of a**
487 **franchise to a prospective franchisee, the addition of a line-make or**
488 **franchise to an existing franchisee, the renewal of a franchise of an**
489 **existing franchisee, the approval of the relocation of an existing**
490 **franchisee's facility, or the approval of the sale or transfer of the**
491 **ownership of a franchise on the willingness of a franchisee, proposed**
492 **franchisee, or owner of an interest in the dealership facility to enter**

493 into a site control agreement or exclusive use agreement. For purposes
494 of this subdivision, the terms "site control agreement" and "exclusive
495 use agreement" include any agreement that has the effect of either
496 requiring that the franchisee establish or maintain exclusive dealership
497 facilities or restricting the ability of the franchisee, or the ability of the
498 franchisee's lessor in the event the dealership facility is being leased,
499 to transfer, sell, lease, or change the use of the dealership premises,
500 whether by sublease, lease, collateral pledge of lease, right of first
501 refusal to purchase or lease, option to purchase, option to lease, or
502 other similar agreement, regardless of the parties to such
503 agreement. Any provision contained in any agreement entered into on
504 or after August 28, 2010, that is inconsistent with the provisions of this
505 subdivision shall be voidable at the election of the affected franchisee,
506 prospective franchisee, or owner of an interest in the dealership
507 facility, provided this subdivision shall not apply to a voluntary
508 agreement where separate, adequate, and reasonable consideration
509 have been offered and accepted;

510 (20) Except for the grounds listed in subdivision (1) of subsection
511 4 of section 407.822, prior to the issuance of any notice of intent to
512 terminate a franchise agreement under the MVFP act for unsatisfactory
513 sales or service performance, the franchisor shall provide the
514 franchisee with no less than one hundred twenty days written notice
515 of the specific asserted grounds for termination. Thereafter, the
516 franchisee shall have one hundred twenty days to cure the asserted
517 grounds for termination, provided the grounds are both reasonable and
518 of material significance to the franchise relationship. If the franchisee
519 fails to cure the asserted grounds for termination by the end of the
520 cure period, then the franchisor may give the sixty day notice required
521 by subsection 4 of section 407.822 if it intends to terminate the
522 franchise;

523 (21) To require, attempt to require, coerce, or attempt to coerce
524 a franchisee, by franchise agreement or otherwise, or as a condition to
525 the renewal or continuation of a franchise agreement, to:

526 (a) Exclude from the use of the franchisee's facilities a line-make
527 for which the franchisee has a franchise agreement to utilize the
528 facilities; or

529 (b) Materially change the franchisee's facilities or method of

530 **conducting business if the change would impose substantial or**
531 **unreasonable financial hardship on the business of the franchisee;**

532 **(22) To fail to perform or cause to be performed any written**
533 **warranties made with respect to any motor vehicle or parts thereof;**

534 **(23) To withhold, reduce, or delay unreasonably or without just**
535 **cause services contracted for by franchisees;**

536 **(24) To coerce, attempt to coerce, require, or attempt to require**
537 **any franchisee to provide installment financing with a specified**
538 **financial institution;**

539 **(25) To require, attempt to require, coerce, or attempt to coerce**
540 **any franchisee to close or change the location of the franchisee, or to**
541 **make any substantial alterations to the franchise premises or facilities**
542 **when doing so would be unreasonable under the current market and**
543 **economic conditions. Prior to suggesting the need for any such action,**
544 **the franchisor shall provide the franchisee with a written good faith**
545 **estimate of the minimum number of the models of new motor vehicles**
546 **that the franchisor will supply to the franchisee during a reasonable**
547 **time period, not less than three years, so the franchisee may determine**
548 **if it is a sufficient supply of motor vehicles so as to justify such**
549 **changes, in light of the current market and reasonably foreseeable**
550 **projected and economic conditions. A franchisor or its common entity**
551 **or an entity controlled by or affiliated with the franchisor may not take**
552 **or threaten to take any action that is unfair or adverse to a franchisee**
553 **who does not enter into an agreement with the franchisor under this**
554 **subdivision. This subdivision does not affect any contract between a**
555 **franchisor and any of its franchisees regarding relocation, expansion,**
556 **improvement, remodeling, renovation, or alteration which exists on**
557 **August 28, 2010;**

558 **(26) To authorize or permit a person to perform warranty service**
559 **repairs on motor vehicles unless the person is a franchisee with whom**
560 **the manufacturer has entered into a franchise agreement for the sale**
561 **and service of the manufacturer's motor vehicles unless for emergency**
562 **repairs when a franchisee is not available or repairs pursuant to a fleet**
563 **contract as long as all parts and labor to perform the repairs are less**
564 **than one thousand five hundred dollars at retail per repaired vehicle;**

565 **(27) To discriminate between or refuse to offer to its same line-**
566 **make franchisees all models manufactured for that line-make based**

567 upon unreasonable sales and service standards;

568 (28) To fail to make practically available any incentive, rebate,
569 bonus, or other similar benefit to a franchisee that is offered to another
570 franchisee of the same line-make within this state;

571 (29) To condition a franchise agreement on improvements to a
572 facility unless reasonably required by the technology of a motor vehicle
573 being sold at the facility;

574 (30) To condition the sale, transfer, relocation, or renewal of a
575 franchise agreement, or to condition sales, services, parts, or finance
576 incentives, upon site control or an agreement to renovate or make
577 improvements to a facility; except that voluntary acceptance of such
578 conditions by the franchisee shall not constitute a violation;

579 (31) Failing to offer to all of its franchisees of the same line-make
580 any consumer rebates, dealer incentives, price or interest rate
581 reduction, or finance terms that the franchisor offers or advertises, or
582 allows its franchisees of the same line-make to offer or advertise;

583 (32) Offering rebates, cash incentives, or other promotional items
584 for the sale of a vehicle by its franchisees unless: the same rebate, cash
585 incentive, or promotion is offered to all of its franchisees of the same
586 line-make; and any rebate, cash incentive, or promotion that is based
587 on the sale of an individual vehicle is not increased for meeting a
588 performance standard;

589 (33) Unreasonably discriminating among its franchisees in any
590 program that provides assistance to its franchisees, including internet
591 listings, sales leads, warranty policy adjustments, marketing programs,
592 and dealer recognition programs;

593 (34) To fail to include in any franchise with a franchisee the
594 following language: "If any provision herein contravenes the laws or
595 regulations of any state or other jurisdiction wherein this agreement
596 is to be performed, or denies access to the procedures, forums, or
597 remedies provided for by such laws or regulations, such provision shall
598 be deemed to be modified to conform to such laws or regulations, and
599 all other terms and provisions shall remain in full force," or words to
600 that effect;

601 (35) To withhold, reduce, or delay unreasonably or without just
602 cause delivery of motor vehicle parts and accessories, commodities, or
603 moneys due franchisees;

604 **(36) To use or consider the performance of a franchisee relating**
605 **to the sale of the franchisor's vehicles or the franchisee's ability to**
606 **satisfy any minimum sales or market share quota or responsibility**
607 **relating to the sale of the new vehicles in determining:**

608 **(a) The franchisee's eligibility to purchase program, certified, or**
609 **other used motor vehicles from the franchisor;**

610 **(b) The volume, type, or model of program, certified, or other**
611 **used motor vehicles that a franchisee is eligible to purchase from the**
612 **franchisor;**

613 **(c) The price of any program, certified, or other used motor**
614 **vehicle that the franchisee purchased from the franchisor; or**

615 **(d) The availability or amount of any discount, credit, rebate, or**
616 **sales incentive that the franchisee is eligible to receive from the**
617 **franchisor, for the purpose of any program, certified, or other used**
618 **motor vehicle offered for sale by the franchisor;**

619 **(37) To refuse to allocate, sell, or deliver motor vehicles; to**
620 **charge back or withhold payments or other things of value for which**
621 **the franchisee is otherwise eligible under a sales promotion, program,**
622 **or contest; to prevent a franchisee from participating in any promotion,**
623 **program, or contest; or to take or threaten to take any adverse action**
624 **against a franchisee, including charge-backs, reducing vehicle**
625 **allocations, or terminating or threatening to terminate a franchisee**
626 **because the franchisee sold or leased a motor vehicle to a customer**
627 **who exported the vehicle to a foreign country or who resold the**
628 **vehicle, unless the franchisor proves that the franchisee knew or**
629 **reasonably should have known that the customer intended to export or**
630 **resell the motor vehicle. There is a rebuttable presumption that the**
631 **franchisee neither knew nor reasonably should have known of its**
632 **customer's intent to export or resell the vehicle if the vehicle is titled**
633 **or registered in any state in this country. A franchisor may not take**
634 **any action against a franchisee, including reducing its allocations or**
635 **supply of motor vehicles to the franchisee, or charging back a**
636 **franchisee for an incentive payment previously paid, unless the**
637 **franchisor first meets in person, by telephone, or video conference with**
638 **an officer or other designated employee of the franchisee. At such**
639 **meeting, the franchisor shall provide a detailed explanation, with**
640 **supporting documentation, as to the basis for its claim that the**

641 franchisee knew or reasonably should have known of the customer's
642 intent to export or resell the motor vehicle. Thereafter, the franchisee
643 shall have a reasonable period, commensurate with the number of
644 motor vehicles at issue, but not less than fifteen days, to respond to the
645 franchisor's claims. If, following the franchisee's response and
646 completion of all internal dispute resolution processes provided
647 through the franchisor, the dispute remains unresolved, the franchisee
648 may file a complaint with the administrative hearing commission
649 within thirty days after receipt of a written notice from the franchisor
650 that it still intends to take adverse action against the franchisee with
651 respect to the motor vehicles still at issue. If a complaint is timely
652 filed, the administrative hearing commission shall notify the franchisor
653 of the filing of the complaint, and the franchisor shall not take any
654 action adverse to the franchisee until the administrative hearing
655 commission renders a final determination, which is not subject to
656 further appeal, that the franchisor's proposed action is in compliance
657 with the provisions of this subdivision. In any hearing under this
658 subdivision, the franchisor has the burden of proof on all issues raised
659 by this subdivision;

660 (38) To require a franchisee to provide its customer lists or
661 service files to the franchisor, unless necessary for the sale and
662 delivery of a new motor vehicle to a consumer, to validate and pay
663 consumer or dealer incentives, or for the submission to the franchisor
664 of a claim for warranty parts, repairs, or services supplied or permitted
665 by the franchisee. Nothing in this section shall limit the
666 manufacturer's or distributor's ability to require or use customer
667 information to satisfy any safety, recall, or notice obligation. Such
668 customer information obtained by a franchisee is owned by the
669 franchisee;

670 (39) To mandate the use by the franchisee, or condition access
671 to any services offered by the franchisor on the franchisee's use, or
672 condition the acceptance of an order of any product or service offered
673 by the franchisor on the franchisee's use, or condition the acceptance
674 of any claim for payment from the franchisee on the franchisee's use,
675 or condition the franchisee's participation in any program offered by
676 the franchisor, a common entity or an entity controlled by the
677 franchisor on the franchisee's use of any form, equipment, part, tool,

678 furniture, fixture, data processing program or equipment, automotive
679 service equipment, or sign from the franchisor, a vendor recommended
680 by the franchisor, a common entity or an entity controlled by the
681 franchisor if the franchisee is able to obtain the identical or reasonably
682 equivalent product from another vendor;

683 (40) Establishing any performance standard or program for
684 measuring franchisee performance that may have a material impact on
685 a franchisee that is not fair, reasonable, and equitable, or applying any
686 such standard or program to a franchisee in a manner that is not fair,
687 reasonable, and equitable. Within ten days of a request of a franchisee,
688 a franchisor shall disclose in writing to the franchisee a description of
689 how a performance standard or program is designed and all relevant
690 information used in the application of the performance standard or
691 program to that franchisee unless the information is available to the
692 franchisee on the franchisor's website;

693 (41) Establishing or implementing a plan or system for the
694 allocation, scheduling, or delivery of new motor vehicles, parts, or
695 accessories to its franchisees that is not fair, reasonable, and equitable
696 or modifying an existing plan or system so as to cause the plan or
697 system to be unreasonable, unfair, or inequitable. Within ten days of
698 any request of a franchisee, the franchisor shall disclose in writing to
699 the franchisee the method and mode of distribution of that line-make
700 among the franchisor's franchisees of the same line-make within the
701 same metro area for franchisees located in a metropolitan area and
702 within the county and contiguous counties of any franchisee not
703 located in a metropolitan area; and

704 (42) To violate any other provision of the MVFP act that
705 adversely impacts a franchisee.

407.828. 1. Notwithstanding any provision in a franchise to the
2 contrary, each franchisor shall specify in writing to each of its franchisees in
3 this state the franchisee's obligations for preparation, delivery, and warranty
4 service on its products. The franchisor shall **fairly and reasonably** compensate
5 the franchisee for **preparation, delivery, and** warranty service required of the
6 franchisee by the franchisor. The franchisor shall provide the franchisee with the
7 schedule of compensation to be paid to the franchisee for parts, [work] **labor**, and
8 service, and the time allowance for the performance of the [work] **labor** and
9 service **for the franchisee's obligations for preparation, delivery, and**

10 **warranty service.**

11 2. The schedule of compensation shall include reasonable compensation
12 for diagnostic work, as well as repair service and labor **for the franchisee to**
13 **meet its obligations for preparation, delivery, and warranty**
14 **service. The schedule shall also include reasonable and adequate** time
15 allowances for the diagnosis and performance of **preparation, delivery, and**
16 warranty [work and] service [shall be reasonable and adequate for the work] to
17 be performed **in a careful and professional manner.** In the determination
18 of what constitutes reasonable compensation **for labor and service** pursuant
19 to this section, the principal factor to be given consideration shall be the
20 prevailing wage rates being [paid] **charged for similar labor and service** by
21 franchisees in the [community] **market** in which the franchisee is doing
22 business, and in no event shall the compensation of a franchisee for [warranty]
23 **labor and service** be less than the rates charged by the franchisee for [like]
24 **similar labor and** service to retail customers for nonwarranty **labor and**
25 service [and repairs], provided that such rates are reasonable. **The primary**
26 **factor in determining a fair and reasonable compensation for parts**
27 **under this section shall be the prevailing amount charged for similar**
28 **parts by other same line-make franchisees in the market in which the**
29 **franchisee is doing business and the fair and reasonable compensation**
30 **for parts shall not be less than the amount charged by the franchisee**
31 **for similar parts to retail customers for nonwarranty parts, provided**
32 **that such rates are reasonable. If another same line-make franchisee**
33 **is not available within the market, then the prevailing amount charged**
34 **for similar parts by other franchisees in the market shall be used as the**
35 **primary factor.**

36 3. A franchisor shall [not:

37 (1) Fail to] perform [any] **all** warranty [obligation];

38 (2) Fail to] **obligations, including recall notices;** include in written
39 notices of franchisor recalls to new motor vehicle owners and franchisees the
40 expected date by which necessary parts and equipment will be available to
41 franchisees for the correction of the defects; [or

42 (3) Fail to] **and reasonably** compensate any of the franchisees in this
43 state for repairs [effected] **required** by the recall. **Reasonable compensation**
44 **for parts, labor, and service shall be determined under subsection 2 of**
45 **this section.**

46 4. [All claims made by a franchisee pursuant to this section for labor and
47 parts shall be paid within thirty days after their approval. All claims shall be
48 either approved or disapproved by the franchisor within thirty days after their
49 receipt on a proper form generally used by the franchisor and containing the
50 usually required information therein. Any claims not specifically disapproved in
51 writing within thirty days after the receipt of the form shall be considered to be
52 approved and payment shall be made within thirty days. A claim which has been
53 approved and paid may not be charged back to the franchisee unless the
54 franchisor can show that the claim was fraudulent, false, or unsubstantiated,
55 except that a charge back for false or fraudulent claims shall not be made more
56 than two years after payment, and a charge back for unsubstantiated claims shall
57 not be made more than fifteen months after payment. A franchise shall maintain
58 all records of warranty repairs, including the related time records of its
59 employees, for at least two years following payment of any warranty claim.] **No**
60 **franchisor shall require a franchisee to submit a claim authorized**
61 **under this section sooner than thirty days after the franchisee**
62 **completes the preparation, delivery, or warranty service authorizing**
63 **the claim for preparation, delivery, or warranty service. All claims**
64 **made by a franchisee under this section shall be paid within thirty days**
65 **after their approval. All claims shall be either approved or**
66 **disapproved by the franchisor within thirty days after their receipt on**
67 **a proper form generally used by the franchisor and containing the**
68 **usually required information therein. Any claims not specifically**
69 **disapproved in writing within thirty days after the receipt of the form**
70 **shall be considered to be approved and payment shall be made within**
71 **fifteen days thereafter. A franchisee shall not be required to maintain**
72 **defective parts for more than thirty days after submission of a claim.**

73 5. A franchisor shall compensate the franchisee for franchisor-sponsored
74 sales or service promotion events, **including but not limited to, rebates,**
75 **programs, or activities in accordance with established written guidelines for**
76 **such events, programs, or activities, which guidelines shall be provided to**
77 **each franchisee.**

78 6. **No franchisor shall require a franchisee to submit a claim**
79 **authorized under subsection 5 of this section sooner than thirty days**
80 **after the franchisee becomes eligible to submit the claim. All claims**
81 **made by a franchisee pursuant to subsection 5 of this section for promotion**

82 events, **including but not limited to rebates**, programs, or activities shall be
83 paid within ten days after their approval. All claims shall be either approved or
84 disapproved by the franchisor within thirty days after their receipt on a proper
85 form generally used by the franchisor and containing the usually required
86 information therein. Any claim not specifically disapproved in writing within
87 thirty days after the receipt of this form shall be considered to be approved and
88 payment shall be made within **[thirty] ten days**. [The franchisor has the right
89 to charge back any claim for twelve months after the later of either the close of
90 the promotion event, program, or activity, or the date of the payment.]

91 **7. In calculating the retail rate customarily charged by the**
92 **franchisee for parts, service, and labor, the following work shall not be**
93 **included in the calculation:**

94 **(1) Repairs for franchisor, manufacturer, or distributor special**
95 **events, specials, or promotional discounts for retail customer repairs;**

96 **(2) Parts sold at wholesale;**

97 **(3) Engine assemblies and transmission assemblies;**

98 **(4) Routine maintenance not covered under any retail customer**
99 **warranty, such as fluids, filters, and belts not provided in the course of**
100 **repairs;**

101 **(5) Nuts, bolts, fasteners, and similar items that do not have an**
102 **individual part number;**

103 **(6) Tires; and**

104 **(7) Vehicle reconditioning.**

105 **8. If a franchisor, manufacturer, importer, or distributor**
106 **furnishes a part or component to a franchisee, at no cost, to use in**
107 **performing repairs under a recall, campaign service action, or**
108 **warranty repair, the franchisor shall compensate the franchisee for the**
109 **part or component in the same manner as warranty parts compensation**
110 **under this section by compensating the franchisee at the average**
111 **markup on the cost for the part or component as listed in the price**
112 **schedule of the franchisor, manufacturer, importer, or distributor, less**
113 **the cost for the part or component.**

114 **9. A franchisor shall not require a franchisee to establish the**
115 **retail rate customarily charged by the franchisee for parts, service, or**
116 **labor by an unduly burdensome or time consuming method or by**
117 **requiring information that is unduly burdensome or time consuming to**
118 **provide, including, but not limited to, part-by-part or transaction-by-**

119 transaction calculations. A franchisee shall not request a franchisor to
120 approve a different labor rate or parts rate more than twice in one
121 calendar year.

122 10. If a franchisee submits any claim under this section to a
123 franchisor that is incomplete, inaccurate, or lacking any information
124 usually required by the franchisor, then the franchisor shall promptly
125 notify the franchisee, and the time limit to submit the claim shall be
126 extended for a reasonable length of time, not less than five business
127 days following notice by the franchisor to the franchisee, for the
128 franchisee to provide the complete, accurate, or lacking information to
129 the franchisor.

130 11. (1) A franchisor may only audit warranty, sales, or incentive
131 claims and charge-back to the franchisee unsubstantiated claims for a
132 period of twelve months following payment, subject to all of the
133 provisions of this section. Furthermore, if the franchisor has good
134 cause to believe that a franchisee has submitted fraudulent claims, then
135 the franchisor may only audit suspected fraudulent warranty, sales, or
136 incentive claims and charge-back to the franchisee fraudulent claims
137 for a period of two years following payment, subject to all provisions
138 of this section.

139 (2) A franchisor shall not require documentation for warranty,
140 sales, or incentive claims more than twelve months after the claim was
141 paid.

142 (3) Prior to requiring any charge-back, reimbursement, or credit
143 against a future transaction arising out of an audit, the franchisor shall
144 submit written notice to the franchisee along with a copy of its audit
145 and the detailed reason for each intended charge-back, reimbursement,
146 or credit. A franchisee may file a complaint with the administrative
147 hearing commission within thirty days after receipt of any such written
148 notice challenging such action. If a complaint is filed within the thirty
149 days, then the charge-back, reimbursement, or credit shall be stayed
150 pending a hearing and determination of the matter under section
151 408.822. If the administrative hearing commission determines that any
152 portion of the charge-back, reimbursement, or credit is improper, then
153 that portion of the charge-back, reimbursement, or credit shall be void
154 and not allowed.

407.831. 1. Notwithstanding the terms of any franchise

2 agreement to the contrary, each franchisor, including any successor
3 manufacturer of that franchisor, shall indemnify and hold harmless
4 each franchisee obtaining a new motor vehicle from the franchisor from
5 and against any liability, including reasonable attorney's fees, expert
6 witness fees, court costs, and other expenses incurred in the litigation,
7 so long as such fees and costs are reasonable, that the franchisee may
8 be subjected to by the purchaser of the vehicle because of damage to
9 the motor vehicle that occurred before delivery of the vehicle to the
10 franchisee and that was not disclosed in writing to the franchisee prior
11 to delivery of the vehicle. This indemnity obligation of the franchisor
12 applies regardless of whether the damage falls below the six percent
13 threshold under subsection 2 of this section. The failure of the
14 franchisor to indemnify and hold harmless the franchisee is a violation
15 of this section.

16 2. If the cost of repairing damage to a new motor vehicle that
17 occurs before delivery to the franchisee's location exceeds six percent
18 of the manufacturer's suggested retail price, as measured by retail
19 repair costs, the franchisee may reject or, if title has passed to the
20 franchisee, require the franchisor who delivered the vehicle to
21 repurchase the vehicle within ten business days after delivery, unless
22 the damage occurred during shipment and the method of
23 transportation, carrier, or transporter of the motor vehicle was
24 designated by the franchisee. Upon repurchase, the franchisor shall be
25 subrogated to all of the franchisee's rights against the carrier or
26 transporter of the motor vehicle regarding damage. The cost of
27 repairing glass, tires, bumpers, moldings, and audio equipment with
28 identical manufacturer's original equipment shall not be included in
29 determining the cost of repairing damage under this subsection.

407.833. 1. Notwithstanding the term of any franchise to the
2 contrary, a franchisor shall not modify a franchise during the term of
3 the franchise or upon its renewal if the modification substantially and
4 adversely affects the franchisee's rights, obligations, investment, or
5 return on investment without giving ninety days written notice of the
6 proposed modification to the franchisee unless the modification is
7 required by law or court order. Within the ninety-day notice period the
8 franchisee may file with the administrative hearing commission and
9 serve upon the franchisor a complaint for a determination of whether

10 there is good cause for permitting the proposed modification and
11 whether the proposed modification violates any provision of the MVFP
12 act. The administrative hearing commission shall promptly schedule
13 a hearing and decide the matter. Multiple complaints pertaining to the
14 same proposed franchise modification shall be consolidated for
15 hearing. The proposed franchise modification shall not take effect
16 pending the determination of the matter.

17 2. The burden of proof shall be on the franchisor, except that the
18 burden of proof with regard to the factor set forth in subdivision (3) of
19 this subsection shall be on the franchisee, and the administrative
20 hearing commission may consider any relevant factor including:

21 (1) The reasons for the proposed modification;

22 (2) Whether the proposed modification is applied to or affects all
23 franchisees in a nondiscriminating manner;

24 (3) The degree to which the proposed modification will have a
25 substantial and adverse effect upon the franchisee's rights, investment,
26 or return on investment;

27 (4) Whether the proposed modification is in the public interest;

28 (5) The degree to which the proposed modification is necessary
29 to the orderly and profitable distribution of products by the franchisor;

30 (6) Whether the proposed modification is offset by other
31 modifications beneficial to the franchisee;

32 (7) Whether the proposed modification violates any provision of
33 the MVFP act.

34 3. The decision of the administrative hearing commission shall
35 be in writing and shall contain findings of fact and a determination of
36 whether there is good cause for permitting the proposed modification
37 and whether the proposed modification violates any provision of the
38 MVFP act. The administrative hearing commission shall deliver copies
39 of the decision to the parties personally or by registered mail. If the
40 administrative hearing commission determines that there is not good
41 cause for permitting the proposed modification or that the proposed
42 modification violates any provision of the MVFP act, then the
43 franchisor shall not proceed with the proposed modification.

44 4. For purposes of this section, the term "modification" includes,
45 but is not limited to, any change, amendment, supplement, deletion,
46 addition, or replacement of any provision of the franchise.

407.835. **1. Notwithstanding any provision of the franchise to the**
2 **contrary**, in addition to the administrative relief provided in sections 407.810
3 to 407.835, any [motor vehicle] franchisee may bring an action in any court of
4 competent jurisdiction against a [motor vehicle] franchisor with whom the
5 franchisee has a franchise, **manufacturer, distributor, or importer** for an act
6 or omission which constitutes [an unlawful practice as defined in section 407.825]
7 **a violation of a franchise or the MVFP act** to recover **actual damages**
8 **sustained by reason thereof, plus actual and reasonable expenses of**
9 **litigation, including, but not limited to, depositions, transcripts, expert**
10 **witnesses, and attorney fees**, and, where appropriate, such [motor vehicle]
11 franchisee shall be entitled to injunctive relief, but the remedies set forth in this
12 section shall not be deemed exclusive and shall be in addition to any other
13 remedies permitted by law **or equity**.

14 **2. In any action wherein a franchisor, manufacturer, distributor,**
15 **or importer has been found liable in damages to any franchisee for a**
16 **willful violation of a franchise or the MVFP act, then any franchisee so**
17 **damaged shall be entitled to recover actual damages sustained thereby,**
18 **plus actual and reasonable expenses of litigation, including, but not**
19 **limited to, depositions, transcripts, expert witnesses, and attorney fees,**
20 **and, where appropriate, such motor vehicle franchisee shall be entitled**
21 **to injunctive relief, but the remedies set forth in this section shall not**
22 **be deemed exclusive and shall be in addition to any other remedies**
23 **permitted by law or equity. In addition, a court or jury may award a**
24 **franchisee punitive damages in such amount as it deems appropriate.**

25 **3. In the event of a dispute between a franchisee and a**
26 **franchisor:**

27 **(1) At the option of the franchisee, venue of any civil action,**
28 **other than a proceeding before the administrative hearing commission,**
29 **shall be proper in the circuit court of Cole County or the circuit court**
30 **in the judicial circuit where the franchisee resides or has its principal**
31 **place of business;**

32 **(2) Missouri law shall govern the franchise and the dispute, both**
33 **substantively and procedurally;**

34 **(3) No mandatory arbitration provision in any franchise shall be**
35 **valid;**

36 **(4) No waiver of jury trial in any franchise shall be valid;**

37 **(5) No provision in any franchise providing for a franchisee to**

38 pay a franchisor's attorney fees, mediation costs, arbitration costs, or
39 litigation costs shall be valid;

40 (6) No provision in any franchise providing for mediation,
41 arbitration, or litigation to occur outside this state shall be valid; and

42 (7) Unless otherwise provided in the MVFP act, the franchisor
43 shall have the burden of proving by a preponderance of the evidence
44 that it has acted in good faith, that all required notices were given, that
45 good cause exists for its actions, and that its actions were fair and
46 reasonable giving due regard to the equities of the affected parties,
47 except for the franchisee's damages and expenses of litigation.

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